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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,850	06/26/2003	Curtis A. Richardson	89190.022003/DP309241	5766

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DELPHI TECHNOLOGIES, INC.
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EXAMINER

MARTIN, ANGELA J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,850	Applicant(s) RICHARDSON ET AL.	
	Examiner Angela J. Martin	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-29 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 11-29 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is responsive to the Remarks filed on May 11, 2006. The Applicant requests reconsideration of the Application. However, the rejection is made final for the following reasons of record.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpkins et al., U.S. Pat. Application Pub. 2003/0235723 A1, in view of Kenchington et al., U.S. Pat. No. 6,626,650 B1.

Rejection of claims 11-29 drawn to a fuel cell assembly.

Simpkins et al., teach a fuel cell assembly comprising a fuel cell stack, a supporting structure, and a gas spring disposed with the assembly (abstract) between the stack and supporting structure (Fig. 3), the spring including a first and second membranes (sect. 0033), means for sealing edges of the membranes to define a closed chamber for capture of gas (sect. 0033). It teaches a solid oxide fuel cell (sect. 0025-0027).

Simpkins et al., do not teach a first and second valve means.

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Kenchington et al., teach a first (col. 8, lines 1-4) and second valve means (col. 13, lines 6-14) for fluid displacement (col. 3, lines 15-21), which may be used in a fuel cell system (col. 6, lines 4-9), and a gas spring disposed with the assembly (col. 3, lines 7-9).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to insert the teachings of Kenchington et al., into the teachings of Simpkins et al., because Kenchington et al., teach that the first and second valve means allow gas to be expelled only when a pressure differential is established, which would prevent a portion of gas from leaking in an opposite direction from the flow of gas.

Response to Arguments

3. Applicant's arguments filed 5/11/06 have been fully considered but they are not persuasive. Applicant argues that "there is no motivation to combine the teachings of the Kenchington reference with the fuel cell stack disclosed in the Simpkins reference." However, independent claims 11, 13 and 21 are not sufficiently structurally defined so as to patentably distinguish over the prior art. In addition, Applicant is not providing sufficient structure, e.g. (at most) claims 11, 13, 21 only require a fuel cell, a supporting structure (like a housing for housing the fuel cell); and a spring contacting the housing and a sealing. Also, the means-plus function of claim 13 is not properly invoking 112, 6th paragraph because it recites "gas spring means disposed" (not gas spring means for + the function).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Martin whose telephone number is 571-272-1288. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AJM


PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER